BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter Of	)	
	)	
Revision of the Commission's Rules To	)	
To Ensure Compatibility with Enhanced	)	CC Docket No. 94-102
911 Emergency Calling Systems	)	
Systems	)	
	)	

Opposition of City of Richardson, Texas to Petitions for Reconsideration and Clarification

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The City of Richardson, Texas ("Richardson") hereby opposes Cingular Wireless' Petition for Reconsideration ("Cingular Petition") and Sprint PCS' Petition for Expedited Reconsideration and Clarification ("Sprint PCS Petition") of the Richardson Order.[1]

I. Summary

The Cingular and Sprint PCS Petitions start from a faulty premise. The FCC's goal in adopting its E911 rules, including the subsection at issue here, was to "avoid potential delays in the provision of vital Phase II services" and to "speed the actual implementation of E911" so that "(t)he substantial benefits of wireless E911 to the public interest and safety" are brought to the public "without undue delay." Second Memorandum Opinion & Order, 14 FCC Rcd 20850, 20852 (1999); Third Report and Order, 14 FCC Rcd 17388, 17392 (1999). The Richardson Order furthers these goals. The Phase II rules were adopted to protect the public, not to provide the wireless carriers with "absolute protection," as Cingular claims. Cingular Petition at Pg. 9.

As the Commission has found, each day, there are over 100,000 wireless calls to 911 centers for which automatic location information is not available, and the public's safety suffers

[1] Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas, FCC 01-293, 2001 FCC Lexis 5631 (2001) ("Richardson Order").

enormously as a result. It is a national disgrace that the carriers are fighting before the FCC to avoid their obligations rather than using all of their resources to deploy the available Phase II technology. It is especially disgraceful that Cingular, which has not deployed Phase II service anywhere, which has completely violated the FCC's rules and the FCC's order granting Cingular a waiver based on deadlines Cingular itself volunteered, and which has not met a single PSAP request, attacks the Richardson Order because under it, "wireless carriers will undoubtedly be concentrating on meeting the demands of certain PSAPs who are unable to use the information." Cingular Petition at Pg. 10. Cingular is not meeting the demands of any PSAP (including PSAPs who are able to use the information under anyone's definition), and the FCC should not reconsider the Richardson Order based on such comments which are, at best, groundless speculation and, at worst, grossly hypocritical. Cingular does not raise any meritorious procedural or substantive challenge to the Richardson Order and largely rehashes the same arguments the Commission considered and rejected in the Richardson Order.

Sprint PCS has a more commendable record, having deployed Phase II service throughout one state (Rhode Island) and having begun to sell Phase II-capable phones throughout the nation. Sprint PCS was able to complete its Rhode Island deployment without any FCC mandate of the E2 standard and even if the ALI database there had to be upgraded. Nevertheless, the Sprint PCS Petition insists that the FCC must mandate the E2 standard and asks that carriers be permitted to delay bringing Phase II service to PSAPs until LECs have upgraded the ALI databases. Sprint PCS Petition at Pgs. ii, 4-10. The Richardson Order properly declined to mandate the E2 standard. Sprint PCS and Verizon Wireless have both already deployed Phase II service without such a mandate; the mandate is not necessary for Phase II deployment. As for ALI upgrades, the ruling in the Richardson Order was correct. It would be inconsistent with the FCC's goal to "speed the actual implementation of E911" for the FCC to assume summarily that there will always be delays in ALI upgrades such that wireless carriers should not have to take any action to bring Phase II service until the upgrades are actually completed. As the Richardson Order explains, the ALI upgrade is only necessary for

PSAPs migrating from a NCAS Phase I solution to Phase II. Richardson Order at ¶17. If there are delays in particular instances in completing necessary upgrades, the Commission has enforcement authority over the LECs to spur action. But, there is no good reason for the Commission to foster delay by the wireless carriers by allowing them to do nothing while awaiting the LECs, particularly given that there is no indication that all LECs will delay making the upgrade or how long any particular LEC will take. The Richardson Order properly presumes that such upgrades will be completed within the six-month period, and Sprint PCS presents no ground for reconsideration.

Finally, both Sprint PCS and Cingular want the FCC to toll the six-month deadline while a PSAP establishes its readiness. Sprint PCS Petition at Pgs. 12-13; Cingular Petition at Pg. 14. A tolling rule would invite carriers to delay providing Phase II service by challenging a PSAP's readiness, thereby extending the six-month clock for an indefinite period of time while the matter is debated and ultimately resolved. Without question, if a PSAP submits a request which turns out to be invalid, the carrier should be able to return the request, and the "six-month clock" would go back to 0 until the PSAP submits a valid request. But, a tolling rule is not necessary or appropriate and will only foster the very delays which the Commission is attempting to preclude through its E911 rules. If the carriers insist on proposing tolling, we would likewise propose that there be a substantial financial penalty imposed on a carrier which challenges the validity of a PSAP request which turns out to have been valid on the date sent. It is only fair that there be a deterrent against meritless challenges by carriers of PSAP requests. We strongly suspect that the carriers will not want tolling if they will also have to face such financial penalties, which are logically necessary if there is to be tolling. Thus, we urge the Commission to leave the Richardson Order intact because "promoting cooperation and good faith negotiations between all of the parties is the best approach to ensuring a timely and effective roll-out of E911 service." Richardson Order at ¶11.

II. Cingular's Procedural Arguments Have No Merit

Cingular makes the same procedural arguments in its Petition for Reconsideration as it has made twice before, first in opposing the Richardson Petition and then in commenting on the subsequent Public Notice issued by the Wireless Telecommunications Bureau (the so-called "Second Public Notice") seeking comment on whether the Commission should clarify its rules by establishing objective criteria to determine whether a PSAP request is valid.[1] The Richardson Order properly rejected the these arguments, and they fare no better in their third iteration.

Cingular has nothing to complain about. Cingular was put on notice by the Second Public Notice that the notion of adopting objective criteria to determine whether a PSAP request was valid was under consideration; Cingular was provided examples of possible criteria in the Second Public Notice; and, Cingular was invited to submit comments on the issue. That is the essence of notice and comment rulemaking as mandated by the APA. See 5 U.S.C. §553. Cingular notes that the Second Public Notice did not contain the text of the proposed rule, but Cingular knows full well that there is no such requirement under the APA, having cited no case requiring the text of the proposed rule to be published in a NPRM.

Moreover, as the Richardson Order finds, Cingular cannot make any legitimate claim of prejudice merely because the Second Public Notice was issued by the Bureau rather than the Commission, even though Cingular does not dispute that a finding of such prejudice is an absolute prerequisite to sustain such a procedural challenge. See Richardson Order at ¶25. Cingular cannot point to any argument it refrained from making because of the technicality that the Second Public Notice was issued by the Bureau rather than the Commission. Indeed, Cingular does not attempt to distinguish or come within the Sagebrush Rebellion case[2] relied upon in the Richardson Order, which establishes that in order to prevail on the type of claim made here by Cingular, it would have to show that "the public's ability to participate in the decisionmaking process" had been prejudiced. Richardson Order at ¶25 (quoting Sagebrush

[1]Second Public Notice, 16 FCC Rcd 13670 (2001).

[2]Sagebrush Rebellion v. Hodel, 790 F.2d 760, 764-765 (9th Cir. 1986)

Rebellion, 790 F.2d at 765.)

Similarly, Cingular does not refute the finding in the Richardson Order that no additional notice and comment was necessary for the rule change announced therein because it was a logical outgrowth of proposals initially set forth in the prior notice of proposed rulemaking which lead to the adoption of Section 20.18 (j), citing Logansport Broadcasting Corp. v. US, 210 F.2d 24, 28 (D.C. Cir. 1954) and its progeny. Richardson Order at ¶¶26-27. Cingular does not deny the existence of the logical outgrowth legal doctrine or provide any reason for the Commission to reconsider its finding in the Richardson Order that the logical outgrowth doctrine applied here. PSAP-carrier issues have been a constant matter debated in this docket; the Commission points to the elimination of the cost recovery requirement, which occurred in 1999, not years earlier as Cingular suggests. Compare Richardson Order at ¶26 with Cingular Petition at Pg. 8, n.30. Instead, Cingular merely repeats its prior arguments without even responding to, much less distinguishing, this well-established line of case law which defeats Cingular's arguments. The Commission should reject Cingular's meritless arguments once again.

III. Cingular's Substantive Arguments Have No Merit

Cingular's substantive arguments fare no better. Cingular claims first that the revised Section 20.18 (j) is "internally inconsistent and in conflict with its underlying purpose" and thus should be reconsidered. Cingular Petition at Pg. 1. See id. at Pgs. ii, 8-10. In making this argument, however, Cingular never mentions, much less deals with, the underlying purpose of the entirety of the Commission's E911 rules, of which Section 20.18 (j) is an important part: namely, to "avoid potential delays in the provision of vital Phase II services" and to "speed the actual implementation of E911" so that "(t)he substantial benefits of wireless E911 to the public interest and safety" are brought to the public "without undue delay." Second Memorandum Opinion & Order, 14 FCC Rcd 20850, 20852 (1999); Third Report and Order, 14 FCC Rcd 17388, 17392 (1999). Cingular cannot possibly explain how it would speed the deployment of Phase II E911 and avoid delays to allow wireless carriers to indefinitely delay even starting to meet a PSAP request because the PSAP has contracted and paid for the necessary equipment for

which it has commitments from suppliers to install and make operational within the six-month period. There is no good reason to force the public to wait six months for the PSAP's equipment to be installed and then to have to wait another six months for Cingular to complete work it could have completed in the prior six months.

The overriding policy objective throughout the Commission's E911 proceeding has been to encourage the speedy deployment of E911 service, not absolutely protecting carriers against "needless expenditures. . ." See Cingular Petition at Pg. 9. Now that Richardson showed the Commission that carriers had been using their interpretation of Section 20.18 (j) as originally enacted to make self-serving, arbitrary assessments of a carrier's readiness to deny PSAP requests (as Richardson suffered at the hands of VoiceStream), it was entirely reasonable and appropriate for the Commission to revise the rule to incorporate objective criteria. Those criteria prevent the carriers from engaging in needless delays in E911 deployment, while still giving the carriers a reasonable degree of protection against needless expenditures.

PSAPs are public entities, and they are entitled to some protection against the premature expenditures of public funds for equipment which can only be used when the carrier provides Phase II service. The Richardson Order strikes the right balance. A carrier cannot simply sit back and do nothing for six months while a PSAP has spent the money to buy the necessary equipment, but a carrier will not have to spend money to deliver Phase II service to a PSAP which makes a request without any indication that it will be ready. This is an entirely fair and rational policy, and there is no reason for the Commission to reconsider it.

Cingular's Petition goes to great lengths to construct speculative arguments about needless investments by carriers, referring to the loss of protection for "wireless carriers from making premature investments in E911 infrastructure that cannot be used by PSAPs. . ." Cingular Petition at Pg. 10. The truth is that Cingular itself has not made any needless investment to deliver Phase II service; unfortunately, Cingular has not delivered any such service anywhere. But, there are hundreds of PSAPs which have spent public funds to enter into contracts for equipment and, in many cases, actually to have the equipment installed who are

waiting for Phase II service. The public served by those PSAPs deserve the protection from Phase II service which those funds were expended to acquire. The Commission was right in the Richardson Order to revise Section 20.18 (j) to protect the public, and guard against premature expenditures of public funds, by forcing the carriers to begin delivering service.

Indeed, Cingular asserts that merely ordering equipment "does not establish that the equipment will actually be delivered on schedule," and cites its own failure to deliver Phase II service over its GSM network using E-OTD technology because vendors informed them on the eve of the October 1, 2001 deadline that E-OTD-enabled handsets would not be available for approximately nine months. Cingular Petition at Pg. 9. The Richardson Order requires a PSAP to substantiate its order with "copies of the relevant vendor purchase orders." Richardson Order at ¶15. Cingular has never submitted to the Commission a copy of any purchase order for E-OTD equipment and provided no substantiation of any kind when it informed the Commission on September 28, 2001 that it could not meet the handset deployment schedule proposed in Cingular's own waiver request, including the initial October 1, 2001 deadline which was just three days away. See Letter from Brian Fontes, Vice President-Federal Relations, Cingular to Magalie Salas, Secretary, FCC, CC Docket No. 94-102 (filed September 28, 2001).

Surely, if Cingular actually had unfulfilled orders for E-OTD-enabled handsets for delivery by October 1st, it would have learned of the delay well before September 28th. This raises the following questions: had Cingular actually placed orders for E-OTD-enabled handsets to be delivered by October 1st, and if so, when were these orders placed, in what number, with what vendors, and with what delivery dates?[3] The Richardson Order requires that type of

[3]The available evidence strongly suggests that Cingular had not placed any firm orders with handset vendors for E-OTD-enabled handsets to be delivered prior to October 1, 2001. According to an October 4, 2001 article in Wireless Today ("FCC Deadline Or No, E-911 Technology Takes Time" By Malcolm Spicer), Cambridge Positioning Services, the developer of E-OTD, "made its handset software available at no charge in time for vendors to roll out E-OTD-enabled phones well before the Oct. 1 deadline." According to John Barber, Cambridge Positioning's chief commercial officer, handset vendors "don't want to do anything unless they see clear operator demand for whatever the technology is." And, an October 22, 2001 article in Wireless Insider ("Manufacturers Eyed In E-OTD Delay" By Malcolm Spicer) quotes the chief

substantiation from the PSAPs, and yet Cingular has not come close to providing such substantiation, a matter which Richardson would urge the Commission to investigate as part of its E-911 enforcement efforts.

Cingular's Petition contains a thinly veiled threat that if the Richardson Order stands, Cingular "will likely be forced to challenge virtually every PSAP request because these challenges are the only vehicle for obtaining the protections intended by the rule." Cingular Petition at Pg. 13. As the Commission itself stated in the Richardson Order, "promoting cooperation and good faith negotiations between all of the parties is the best approach to ensuring a timely and effective roll-out of E911 services." Richardson Order at ¶11. Cingular would advance the cause of E911 to a much greater extent by cooperating with PSAPs instead of litigating in this proceeding and threatening additional litigation against them. Certainly, Cingular's threat should not provide any basis for the Commission to reconsider the Richardson Order, and it is a disturbing position for a major nationwide carrier to take before the Commission. PSAPs are governmental entities and should not be presumed by Cingular to have some nefarious plot to force them to spend dollars unnecessarily. It does not make sense that well-run businesses such as America's wireless carriers would want to spend time and money challenging a request from a governmental entity to look behind the statements that the entity has a funding source, has issued the necessary purchase order, and have made a request to a LEC. It is fair to conclude that a significant reason for carriers to institute such challenges would be to delay providing E911 service since resolving such challenges, even with expedited procedures, will take time. The prospect of such challenges is no reason for the Commission to reconsider the Richardson Order.

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technology for Cambridge Positioning, Peter Duffett-Smith, as saying that "all the operators are dragging their feet" in deploying E-OTD because of the elimination of the carrier cost recovery requirement. These statements call into serious question the notion that Cingular had timely placed firm orders with vendors for E-OTD-enabled phones in keeping with the October 1st deadline which Cingular had asked the Commission to impose as part of its waiver to deploy E-OTD. To enforce its E911 rules, the Commission should investigate this matter.

Instead, the Commission should make it clear that if a carrier brings a challenge and loses, there will have been no tolling of the deadlines during the pendency of the challenge, and the carrier will therefore be subject to enforcement sanctions if it misses a deadline as the result of bringing a losing challenge. For the reasons already stated, adopting a tolling provision will only encourage the carriers to do as Cingular threatens in its Petition, challenge every request.

In its Petition, Cingular is suggesting that some PSAPs may make requests for Phase II service without being ready within six months. Cingular Petition at Pgs. 12-13. The facts are that at present, hundreds of PSAPs are ready for Phase II service, Cingular is not now ready to provide the service and Cingular will not be ready for a considerable amount of time. The Commission has to act on the basis of facts and should not reconsider the Richardson Order based on Cingular's speculation.

IV. Sprint's Arguments Likewise Have No Merit

The Sprint PCS Petition does not present any valid ground for reconsideration. As already noted, Sprint PCS has a significantly better record in E911 deployment, having deployed Phase II service throughout one entire state and having begun the sale of Phase II compliant assisted GPS phones on October 1, 2001, the date required by the Commission's rules. Thus, while Sprint has not displayed anything like bad faith shown by Cingular, it has failed to raise a basis to support reconsideration of the Richardson Order.

The Sprint PCS Petition insists that the FCC must mandate the E2 standard and asks that carriers be permitted to delay bringing Phase II service to PSAPs until LECs have upgraded the ALI databases. Sprint PCS Petition at Pgs. ii, 4-10. The Richardson Order correctly declined to mandate the E2 standard. The proof is in the pudding in this issue. Sprint PCS and Verizon Wireless have both already deployed Phase II service without such a mandate. There is vivid proof that such a mandate is not necessary for carriers to deploy Phase II service. Sprint speculates that the lack of a mandate for the E2 standard will cause delays. Sprint PCS Petition at Pgs. 9-10. If such delays come to pass, the Commission can deal with them on a case-by-case basis or by imposing a mandate at that time. But, until there is a problem, there is no reason for

the Commission to institute such a mandate, and the Richardson Order was correct on this point.

As for ALI upgrades, the ruling in the Richardson Order was also correct. It would be inconsistent with the FCC's goal to "speed the actual implementation of E911" for the FCC to assume summarily that there will always be delays in ALI upgrades and rule that wireless carriers do not have to take any action to bring Phase II service until the upgrades are actually completed. As the Richardson Order finds, the ALI upgrade is only necessary for PSAPs migrating from a NCAS Phase I solution to Phase II. Richardson Order at ¶17. Once again, if there are delays in particular instances in completing necessary upgrades, the Commission has enforcement authority over the LECs to require them to act more promply. At this time, however, there is no good reason for the Commission to foster delay by the wireless carriers by allowing them to do nothing while awaiting the LECs, particularly given that there is no indication that all LECs will delay making the upgrade or how long any particular LEC will take. The Richardson Order properly presumes that such upgrades will be completed within the six-month period, and Sprint PCS presents no ground for reconsideration.

V. Conclusion

Wherefore, the City of Richardson respectfully requests that the Commission deny the Petitions for Reconsideration filed by Cingular Wireless and Sprint PCS.

Respectfully submitted,

By: /s/ Peter G. Smith

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Dated: January 18, 2002

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing was sent by U.S. mail, on this 18th day of January 2002, to the following persons:

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